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THE TELECOMMUNICATIONS ASSOCIATION
FORMERLY THE UTILITIES TELECOMMUNICATIONS COUNCIL

EX PARTE OR LATE FILED

TEL +1•202•872•0030
FAX +1•202•872•1331
WEB PAGE: www.utc.org

**Jeffrey L. Sheldon**
**VP & General Counsel**
202-872-0031, ext. 216
*jsheldon@utc.org*



June 18, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

**Ex parte**

Re: ET Docket No. 95-18

Dear Ms. Salas:

In accordance with Section 1.1206(b)(2) of the Commission's Rules, UTC, The Telecommunications Association ("UTC") submits for inclusion in the above-referenced docket an original and one copy of the following written *ex parte* presentation to the Office of Engineering and Technology and the International Bureau.

By this letter, UTC attempts to dispel the misconceptions in the *ex parte* presentation filed by ICO Services Limited ("ICO") on May 5, 1999.[1] ICO submits that the microwave relocation rules for the 2 GHz band violate the *Outer Space Treaty*[2] by granting incumbent licensees property rights in outer space.[3] Even if Space Law were relevant to the microwave relocation rules, which UTC disputes as a general matter, ICO provides an incomplete description of how it might apply.

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[1] Ex parte letter of ICO Services Limited, ET Dkt. No. 95-18 (May 5, 1999)(hereinafter "ICO *ex parte*").
[2] *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*; entered into force on 10 October 1967, 18 U.S.T. 2410; 610 U.N.T.S. 205. (hereinafter "*Outer Space Treaty*").
[3] ICO *ex parte*, at 1.

Conspicuously absent from ICO's analysis is an acknowledgment that the microwave relocation rules are fully consistent with Article VII of the *Outer Space Treaty* ("*Article VII*") and the Convention on International Liability for Damage Caused by Space Objects ("*Liability Treaty*").[4] Both *Article VII* and the *Liability Treaty* make a signatory to the agreement strictly liable for space objects that damage terrestrial interests (e.g. microwave communications) when the signatory either launched the object or procured its launching or when it was launched from its territory or using its facility.

In like manner, the microwave relocation rules require that MSS operations that cause interference to incumbent microwave systems must compensate the incumbents for the damage they cause. Incumbents have a legally cognizable interest in the unfettered operation of their facilities. They also have a more tangible interest in the value of their equipment that is lost due to the interference caused by MSS operations. Finally, they have a right to recover the relocation costs that are directly and proximately caused by MSS operations. Hence, the microwave relocation rules operate like *Article VII* and the *Liability Treaty* to compensate for damages caused by space objects.

By contrast, the other general provisions of the *Outer Space Treaty* have only contrived and theoretical application to the microwave relocation rules. The screed by Dr. Jakhu that accompanies ICO's *ex parte* stretches the relevance of the *Outer Space Treaty* to its breaking point. The *Outer Space Treaty* limits the jurisdictional boundaries of individual nations to prevent them from claiming sovereignty beyond the Earth's atmosphere. ICO would turn the *Outer Space Treaty* on its head, preempting national sovereignty over terrestrial affairs that have a transitory effect on operations in space. Such an extreme interpretation of the *Outer Space Treaty* must not be given any credibility.

Nor do the microwave relocation rules violate the non-discrimination and non-appropriation principles that embody the *Outer Space Treaty*. Instead, they apply uniformly to all satellite operations, merely requiring them to protect incumbent microwave licensees from the harmful interference that they could create, in accordance with *Article VII* and the *Liability Treaty*.

In no way do the relocation rules confer property rights on incumbent licensees. If any analogy is to be drawn to property rights, it is to nuisance law. A mobile satellite operator is free to occupy its orbital slots and to use its assigned frequencies, but not when this use would interfere with the use of incumbent microwave operations on Earth.

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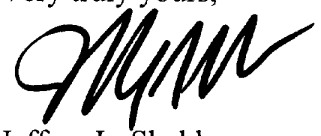
[4] *Convention on International Liability for Damage Caused by Space Objects*, entered into force on 1 September 1972.

The Commission should ignore ICO's latest ploy to escape its reasonable obligations under the non-discriminatory microwave relocation rules. At the same time that it stretches the relevance of certain provisions of Space Law, it disregards other provisions that have even greater relevance that would be difficult to miss. The *Liability Treaty* is not an obscure law nor is Article VII hidden within the *Outer Space Treaty*. There are only six significant international agreements relating to Space Law, including the *Liability Treaty*. As a practical matter, it would be hard to overlook, especially considering its notoriety in a suit by Canada for the cost of disposing nuclear fuel that fell from one of Russia's satellites. The manner by which ICO spins the *Outer Space Treaty* to suit its purposes rules-out the pretense that its views are in any way based on an objective interpretation of Space Law.

Very truly yours,



Jeffrey L. Sheldon,
Vice President and General Counsel

cc: Dale Hatfield
Rebecca Dorch
Julius Knapp
Geraldine Matise
Sean White
Roderick Porter
Linda Haller
Tom Tycz
Karl Kensinger